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SYDNEY DICKERSON,  
In Her Individual Capacity

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JANE DOE, Individually and as  
Next  
Friend of JOHN DOE, a minor;  
RICHARD ROE 1, Individually and  
on  
behalf of JANE ROE 1, a minor;  
RICHARD ROE 2 and MRS.  
RICHARD  
ROE 2, Individually and on behalf of  
JANE ROE 2, a minor; all  
Individually  
and on behalf of a class of persons  
similarly situated,

Plaintiffs,  
vs.

STATE OF HAWAII, SCOTT  
O'NEAL,  
SYDNEY DICKERSON, and JOHN  
DOES 1-10,  
Defendants.

CIVIL NO. 11-00550 DAE KSC  
(Other Non-Vehicle Tort)

SYDNEY DICKERSON'S  
OPPOSITION TO MOTION FOR  
LEAVE TO INTERVENE FILED  
BY ERIC A. SEITZ ;  
CERTIFICATE OF SERVICE

Date: December 27, 2012

Time: 9:30 am

Judge: Hon. Kevin S.C. Chang

STATE OF HAWAII

Third-Party Plaintiff,  
vs.

PETER POES 1-100, PATRICIA  
POES 1-100, AND PARENT POES  
1-100,

Third-Party  
Defendants.

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SCOTT O'NEAL,

Cross-Claimant,  
vs.

STATE OF HAWAI'I AND  
SYDNEY DICKERSON,  
Cross Claim  
Defendants.

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SCOTT O'NEAL,

Third-Party Plaintiff,  
vs.

ROXSANNE TOMITA,

Third-Party  
Defendant.

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**SYDNEY DICKERSON'S OPPOSITION TO MOTION FOR LEAVE  
TO INTERVENE FILED BY ERIC A. SEITZ**

SYDNEY DICKERSON, in her individual capacity (hereinafter Ms.  
Dickerson), by her attorneys, David M. Louie, Attorney General of Hawaii,

Deborah Day Emerson, C. Bryan Fitzgerald, Deputy Attorneys General, pursuant to 24(a)(2), Federal Rules of Civil Procedure, hereby submit Ms. Dickerson's OPPOSITION TO MOTION FOR LEAVE TO INTERVENE FILED BY ERIC A. SEITZ, and would show:

Eric A. Seitz (Mr. Seitz) seeks to represent an anonymous, presumably minor victim, as an intervening plaintiff in this action. However, Mr. Seitz fails to point out to the Court that he is already a counsel of record in this action.

Mr. Seitz represents a counselor at the defendant school, Third-Party Defendant ROXSANNE TOMITA<sup>1</sup> (hereinafter Ms. Tomita). An actual conflict exists which adversely impacts the Ms. Dickerson's interest (as well as those of each other of the parties') in a just and lawful determination of the matter.

### **DISCUSSION**

As a general rule, courts do not disqualify an attorney on the grounds of conflict of interest unless the former client moves for disqualification<sup>2</sup>.

However, as here, another may seek disqualification if there is an "ethical breach [that] so infects the litigation ... that it impacts the moving

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<sup>1</sup> "Mr. Seitz appeared on October 13, 2011 to file " ANSWER OF THIRD-PARTY DEFENDANT ROXSANNE TOMITA" which document is incorporated herein for all purposes.

<sup>2</sup> *Kasza v. Browner*, 133 F.3d 1159, 1171 (9th Cir.1998).

party's interest in a just and lawful determination of her claims.”<sup>3</sup>.

Representing both a minor (possibly mentally disabled<sup>4</sup>) plaintiff as well as representing an adult charged with the infants care and counseling in the same action is unconscionable.

This brazen and contumacious violation of the rules is sufficiently severe to “call in question the fair and efficient administration of justice”<sup>5</sup>.

The Supreme Court has noted that trial courts, when alerted by objection from one of the parties, have an independent duty to ensure that defendants receive a trial” *Wheat v. United States*, 486 U.S. 153, 161 (1988). Likewise, in *United States v. Kenney*, 911 F.2d 3165, 322 (9th Cir.1990), the Ninth Circuit affirmed a district court's decision to disqualify counsel, which was raised by the adversaries’ motion. District courts in the Ninth Circuit also hold that “the Government has standing to make [a] motion for disqualification” based on an actual *or potential* conflict of interest, *United States v. Linton*, 502 F.Supp. 871, 876 (D.C.Nev.1980).

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<sup>3</sup> *Colyer v. Smith*, 50 F. Supp. 2d 966 (C.D. Cal. 1999); see *Jamieson v. Slater*, No. CV 06-1524-PHX-SMM, 2006 WL 3421788 (D. Ariz. Nov. 27, 2006)

<sup>4</sup> Although we do not know the nature of the proposed plaintiff interveners’ disabilities, the Court is asked to take judicial notice of the fact that many of the students at the defendant school suffer from handicaps in addition to their deafness and blindness.

<sup>5</sup> The burden established for non-client standing set up by the Supreme Court of Georgia in *Bernocchi v. Forcucci*, 614 S.E.2d 775 (Ga. 2005)

Attorneys may not undertake a representation in which they have a conflict of interest. Under Rule 1.7 of the Hawaii Rules of Professional Conduct ("Rules"), a conflict of interest arises when an attorney takes on a client whose representation will be directly adverse to another client.

The rules are clear:

**Rule 1.7. CONFLICT OF INTEREST: GENERAL RULE.**

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

***Rule 1.14. CLIENT UNDER A DISABILITY.***

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

That these strictures were complied with is doubtful at best. Even if they were, the prejudice that such *collusive representation* engenders against Ms. Dickerson's ability to defend herself in this action makes this case of conflict the exception requiring denial...not the rule.

Wherefore, Ms. Dickerson prays that the instant motion be denied until such time as the proposed plaintiff-intervener should have proper counsel unburdened by intractable conflict.

DATED: Honolulu, Hawai'i, January 5, 2012.

DAVID M. LOUIE  
Attorney General of Hawai'i

/s/ C. Bryan Fitzgerald  
C. BRYAN FITZGERALD  
Deputy Attorney General

Attorneys for Defendant  
SYDNEY DICKERSON,  
In Her Individual Capacity

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the undersigned date a copy of the above stated motion was served by first-class United States mail or electronically via CM/ECF, to the following parties at their last known address:

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